

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

JETBLUE AIRWAYS CORPORATION and
SPIRIT AIRLINES, INC.,

Defendants.

Civil Action No.: 23-cv-10511-WGY

**TRAVELERS UNITED'S *AMICUS CURIAE*
BRIEF IN SUPPORT OF DEFENDANTS' POSITION**

Dated: December 11, 2023

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I. PRELIMINARY STATEMENT

On behalf of everyday consumers, Travelers United files this *amicus curiae* brief to express its unconditional support for Defendants' position on the proposed merger of Defendants JetBlue Airways Corporation and Spirit Airlines, Inc. Travelers United and Charles Leocha, its President and Co-Founder, have vehemently opposed airline mergers and alliances in the past. They enthusiastically support this one. This *amicus curiae* brief explains why.

II. INTEREST OF THE AMICUS

Travelers United, formerly known as Consumer Travel Alliance, is the only nonprofit, consumer travel organization advocating for consumers' needs in this matter. Travelers United regularly brings together the United States Department of Transportation, the Department of Justice, the Federal Trade Commission, congressional representatives, and major stakeholders to impact important issues on behalf of travelers. The mission of Travelers United encompasses identifying and promoting ways to improve and enhance travel for consumers across all modes of travel, including airlines. Travelers United is the voice of everyday consumers seeking to be heard while policy is shaped, resulting in a better overall experience for travelers.

Travelers United brings a unique perspective to this dispute. In 2010, Mr. Leocha testified before the United States Senate Committee on Commerce, Science, and Transportation about the proposed merger of Continental and United Airlines. In 2013, Mr. Leocha testified before that same Committee about the proposed merger of American Airlines and USAir. From 2012 through 2018, Mr. Leocha served as the first consumer member of the United States Department of Transportation's Aviation Consumer Protection Advisory Committee. Today, Travelers United promotes consumers' interests through partnerships with the United States Senate Commerce Committee, the House of Representatives Transportation and Infrastructure Committee, the Department of Transportation, and the Department of Justice.

III. ARGUMENT

The issue is whether the proposed merger of JetBlue and Spirit may substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. From the consumer’s perspective, this merger would enhance competition, not lessen it.

Antitrust policymakers have for decades measured competition based on the number of airlines. They see the “Big Four”—American Airlines, Delta Air Lines, United Airlines, and Southwest Airlines—dominate the skies and think that keeping JetBlue and Spirit separated might help. Understandably, they believe two airlines are better than one. But at least from the consumer’s perspective, their premise is flawed. What matters are the types of airlines, not the sheer number of carriers.

At heart, this merger will create a larger and more competitive low-cost carrier. That would benefit all consumers, pushing the Big Four toward the paradigm of competition, competitive pricing. As Mr. Leocha put it back in 2010, “The only real airline pricing discipline is generated by competition from low-cost carriers.” *The Financial State of the Airline Industry and the Implications of Consolidation: Hearing Before the Comm. on Com., Sci. & Transp.*, 111th Cong. 28 (2010) (statement of Charles Leocha, Director, Consumer Travel Alliance), attached as Exhibit A.

At that time, Mr. Leocha was testifying before the United States Senate Committee on Commerce, Science, and Transportation about the proposed merger of Continental and United Airlines. He criticized the “government-approved system of airline oligopoly” that merger would create. *Id.* Three years later, when Mr. Leocha testified before that same Committee about the proposed merger of American Airlines and USAir, he warned that “[t]he only clear and present result will be a loss of competition among the major airlines.” *Airline Industry Consolidation:*

Hearing Before the Subcomm. on Aviation Operations, Safety & Sec. of the Comm. on Com., Sci. & Transp., 113th Cong. 37 (2013) (statement of Charles Leocha, Director, Consumer Travel Alliance), attached as Exhibit B. Mr. Leocha even spoke out against the Northeast Alliance, the catalyst for a separate antitrust lawsuit handled recently by another Session of this Court. Charles Leocha, Remarks at the Meeting of the Aviation Consumer Protection Advisory Committee of the United States Department of Transportation at 7 (July 28, 2022), attached as Exhibit C. Because Travelers United believed that these major-airline mergers and alliances would adversely impact consumers, it vigorously opposed them.

But this merger is different. This merger brings together not two major airlines, but two low-cost competitors. That is precisely how the JetBlue Effect will encourage rather than stifle competition. Historically, JetBlue's unique combination of low fares and high-quality service has spurred the Big Four to broaden their services, improve their loyalty programs, and drop their prices. This merger will spread the JetBlue Effect nationwide, benefitting all consumers from Portland, Maine to Portland, Oregon.

In particular, the post-merger airline will serve as a legitimate alternative to the legacy carriers for all consumers. Though it will have a significantly smaller market share than any of the Big Four, the post-merger airline will pose a direct and unavoidable competitive threat. Put another way, without this merger, consumers will continue to have no meaningful choice between the high fares of one legacy carrier or another.

Other ultra-low-cost carriers will benefit as well, which will in turn benefit consumers. Unbundled-service airlines like Frontier, Allegiant, Sun Country, Avelo, and Breeze are eager to fill any vacuum in the ultra-low-cost space, particularly when JetBlue and Spirit divest valuable

slots and gates at key airports. Again, what matters to the consumer are the types of airlines available, not the sheer number of carriers.

IV. CONCLUSION

Unlike the major-airline mergers of the early 2010s, the proposed merger of JetBlue and Spirit will provide consumers with noticeable cost savings, substantial quality improvements, and considerably more options. This merger gives consumers exactly what they need: not just *more* airlines, but genuine *alternatives* to the Big Four. For the reasons detailed above, Travelers United enthusiastically supports this merger and urges the Court to approve it.

Respectfully submitted,

Dated: December 11, 2023

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and that this document will be served on any unregistered participants by U.S. Mail.

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